Testimony before the
House Committee on Insurance
L. Brooks Patterson, Oakland County Executive
May 2, 2013

Good afternoon. I'd like to thank Chairman Lund, Majority Vice Chair Leonard, Minority Vice Chair Segal, and the distinguished members of the House Committee on Insurance for this opportunity to speak in opposition of House Bill 4612, which proposes draconian changes to Michigan's auto no-fault insurance law.

Actually "draconian changes" is sort of a euphemism. House Bill 4612 slices and dices and effectively repeals Michigan's unique no-fault auto insurance which has been on the books since 1978 and is the envy of the motoring public across the United States.

As I strongly oppose House Bill 4612, let me be clear: I have no financial stake in the current catastrophic fund. I draw not one dime from that fund. My injuries and the injuries of my driver sustained in an August 10, 2012 accident are covered by workers compensation. In fact, I can trace my opposition to changes in Michigan no-fault insurance law back to more than a year ago, well before my accident.

As I have organized my thoughts in preparation for my testimony here this afternoon, I have two objectives: 1) to raise a strenuous objection to the current state of the management to Michigan's Catastrophic Claims Association; and 2) set forth my objections to provisions included in the current House Bill 4612.

First, let me list my objections to the conduct of the Michigan Catastrophic Claims Association's day-to-day business.

MCCA operates under a total – and I suggest an illegal – cloud of secrecy. The MCCA suggests that the fund is unsustainable and that it may well implode within 25 years, but then stubbornly refuses to reveal the details of their actuarial assumptions, the basis of their projections, the calculations used in determining the rates they charge. MCCA will not disclose any of these essential details – what we call the rate-making process – to the taxpaying public. In fact, they won't even disclose their behind the scenes machinations to even <u>you</u>, the members of the legislature.

In past testimony before the legislature, the Director of the Department of Insurance and Financial Services, Kevin Clinton, implied that you, the legislature, and to the public as well, that we're too stupid to look at the fund's books. Those are my words. What he testified to

previously was that the fund's books are too complex, too complicated for you and me to understand. That is a ridiculous excuse to activate the cone of silence.

We have accesses to extremely qualified actuaries who could look at the books, look at the assumptions, look at the rate-making process, and then explain it all to us, the dangerously uninformed.

What does MCCA have to hide? There have to be reasons for this paranoia of secrecy.

Perhaps the Michigan Catastrophic Claims Association, which by the way is made up of insurance company executives, wants to keep from the prying eyes of the public the fact that they do some of their banking in the Cayman Islands. It's true. Just check its 990 report on file. I have no idea of how many millions of Michigan taxpayer's money they send to the Caymans – that information is secret – but I can assure you that whatever the amount of money is, it would be a greater boost to Michigan's economy to have the MCCA forced to do their banking locally in Michigan's banks. Banking in the Caymans is perhaps not illegal, but it just doesn't pass the smell test.

Or perhaps the MCCA wants to keep from those prying public eyes the fact that during the height of the Great Recession, the MCCA Executive Director Gloria Freeland received an 18.6% hike in total compensation. And that enrichment wasn't in isolation. Controller James Lunsted's total compensation increased more than 16% between 2008-2010. This information is also on the MCCA's 990 filing.

Compare that unconscionable compensation increase to my Oakland County employees and myself who took a 4.5% salary cut during that same time.

So at the height of the recession, when Michigan voters were taking salary cuts or losing their jobs, the upper echelon of the MCCA received a compensation boost, the likes of which many don't see in even good economic times. Either they increased their compensation with blatant disregard for their fund's financial status, or the fund is healthy enough that it can afford to raise executive compensation by that amount during the worst economic downturn since the Great Depression. Who knows what motivated the compensation increase – it was all done in secret.

I read the MCCA's "Statement of Actuarial Opinion" for Fiscal Year ending June 30, 2012, presented by Roger M. Hayne of Milliman, Inc. In its most recent annual report I found some interesting items:

- 1) The fund's reserves now total more than $15.4 billion as of last June. With a 6.5% return on investment the ROI should be enough to cover all current claims

against the fund on an annual basis. Basically, we have achieved what in essence has become an annuity, a self-sustaining annuity.

- 2) Mr. Hayne also wrote that the fund has made "a reasonable provision for all unpaid loss and loss expense obligations of the company under the terms of its contracts and agreements." Now, I know that Kevin Clinton thinks I'm too stupid to understand this report, but it sounds to me like the catastrophic fund is in satisfactory shape.
- 3) We call this one the "accident miracle." According to Mr. Hayne's report, the fund is calculating its potential liabilities on the assumption that its payment for an individual with catastrophic injuries could extend out 100 years or more after the accident. Say what? Mr. Hayne wrote, "The Company is liable to reimburse member insurers for all covered expenses incurred by qualifying claimants through their respective lifetimes without any monetary limit. As such, the Company's current liabilities could extend to payments more than one hundred years into the future."

If the MCCA wants to suggest to you that the fund is unsustainable and has to be "reformed," all they need to do is use a projected lifetime of 100 years after an accident in a clumsy attempt to manipulate the numbers to reach that conclusion.

Basically, secrecy is inimical to the democratic process. Transparency is the by-word of today. An open government is there for all to see and for all to challenge, except if you're the MCCA.

Besides secrecy, there are other aspects of the current law that are extremely troubling. Who runs the MCCA? We all know the answer to that: The insurance executives of the various insurance firms in the State of Michigan.

I find it ironic that the insurance industry is crying foul that the rates are too high in Michigan. Yet, it's the insurance industry that controls the MCCA that is primarily responsible for the very rates they protest. And then it goes from ironic to ridiculous when the battle cry becomes reform...let's get out there and reform the no-fault insurance law, the very law that has been under the sole enforcement of the MCCA.

Another puzzling aspect about this whole cry for reform...is the flip-flop engaged in by the Insurance Institute of Michigan. It is one of the most vocal supporters of no-fault "reform." But not too long ago the IIM was one of the most ardent defenders of Michigan's no-fault law and there is a trail of quotes that support this observation. In 2012, the Insurance Institute of Michigan, in its fact book, said, "Auto insurance prices in Michigan are reasonable, especially considering the high level of benefits provided to consumers..."

In a statement made two years previous to that, the Insurance Institute of Michigan in 2010, again in its fact book, said, "Michigan is generally recognized as having the most efficient and effective auto insurance laws in the United States."

Now, why the flip-flop? Perhaps it's because of the little known and little discussed Public Act 3 of 2001. There was a ticking time bomb placed in that Act back in 2001 that said beginning in July of 2013 (this year) insurance companies are responsible for a higher payout to those injured in accidents before the MCCA funds kick in. Right now, insurance companies pay $500,000 out of pocket for auto accident injuries before the catastrophic fund takes over. Starting July 1, the amount insurance companies must pay increased by 6% or the consumer price index, whichever is less. And this increase takes place every other year into the future.

Considering there's a payment increase that the insurance companies will be facing soon, it certainly feeds the reform beast.

While I'm a devout capitalist and free market believer, the insurance industry is hard pressed to cry poor in this regard. The insurance industry of Michigan is the second highest paid insurance industry in the United States, second only to Hawaii. I believe (and, of course, I could be corrected) that all the insurance companies in Michigan rank among the Fortune 500. So while the insurance companies are entitled to cry reform, they don't have much to stand on when it comes to the financial impact they're suffering under the current no-fault system.

Let me turn my comments to the word "reform." Reform ranks right up there with motherhood and apple pie. It's difficult to challenge somebody who's advocating "reform." Reform, by its very definition, must mean that they're going to fix something that's broken. Ah, therein lies a rub. I respectfully suggest to this Committee that one man's reform is another man's bankruptcy. Or worse yet, one man's reform is another man's death sentence.

The so-called reforms proposed and House Bill 4162 are draconian in nature. They will leave the catastrophically injured without any hope of regaining a modicum of an improved quality of life. The catastrophically injured know that their ultimate outcome will be to be placed in the Medicaid system at taxpayers' expense and basically warehoused.

Ladies and gentlemen of this Committee, I think we are a better people than to allow that to happen. It's certainly not "reform," and it is a wee-bit cynical to call it reform.

And finally in my remarks this afternoon, let me take a quick look at the proposed legislation and its impact. The most egregious proposed change would be to cap the lifetime benefits at one million dollars. I know that sounds like a lot of money and frankly, it is a lot of money, but not if you're catastrophically injured and in need of long term care.

I know firsthand that my driver involved in my accident of August 10, 2012, in less than eight months has claimed against the workers comp fund (not the no-fault fund) $2.4 million. One million dollars will be quickly depleted and the patient will then be facing personal bankruptcy as family and loved ones exhausts their family assets to care for him. He ultimately becomes a ward of the state, and the taxpayers underwrite the patient's future care through the Medicaid system. The insurance company would dodge, from their perspective, a bullet of lifetime exposure and blithely send it over to the taxpayers of the state to pick up the cost...when, again keeping in mind, the successful insurance companies in this state are second only to Hawaii in income.

The cost of Medicaid over ten years would be an increased burden to the taxpayers of approximately $800 million.

Another disappointment in the pending legislation is that House Bill 4612 will empower the insurance executives to determine what is the appropriate level of care for those catastrophically injured? Instead of trusting the best judgment of you and your doctor, it becomes a decision by an insurance executive who has a pecuniary interest in your case.

Adding insult to injury, as we increase the power of the insurance companies there is a change of terminology that will be devastating to the rehabilitation aspects of the catastrophic patient's recovery. Changing from "reasonably necessary" to "medically appropriate" in the minds of the insurance executives will allow them to exclude many services currently covered that do improve rehabilitation and the quality of life.

You may recall the people of the State of Michigan have been offered twice before "reform" opportunities. In 1992 the voters said "no way" to an insurance industry sponsored statewide referendum that would have dropped the Michigan no-fault system and returned us to the costly tort system.

And then undeterred in 1994, the insurance industry returned again and offered voters a cap on accident injury benefits of one million dollars. That was turned down by 61% of the voters.

Now the industry is back again, this time hoping to avoid the pending impact of P.A. 3 of 2001. If the voters were given the right to vote on this so called reform package, I'm sure they would, once again, tell you, "No way, please leave your hands off no-fault."

Some concluding thoughts. Is the current no-fault system in Michigan a perfect system? No, I don't think so. Is some legitimate reform in order? Yes. Why would no-fault pay three times more for a test that can be achieved under workers comp guidelines at a third of the cost (an MRI for an example). That's an abuse that needs to be corrected. But under the banner of the reform we don't need to throw the baby out of the bathwater. There's so much good under the

current system that it must be protected while we make surgical reforms in an effort to contain costs.

Also consider that with the 6.5% return on investment from the $15.4 billion dollars, the fund is at that point when it can cover its expenses just on the interest income alone. CPAN, the committee formed to protect auto no-fault, said they are absolutely confident that if they got their hands on the books, they could find enough savings to reduce the no-fault premium charge to a minimum, e.g. $50.00.

Fifteen billion is a lot of money. How it's handled, how it's invested, and where it's invested by the MCCA should be open to public scrutiny. And if someone is really looking for "reform," then the elimination of the secrecy of the MCCA would be a good place to start.